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<b>PRE-APPEAL BRIEF REQUEST FOR REVIEW</b>		Docket Number (Optional) <b>P16469/1020P16469</b>									
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on <u>September 2, 2009</u> Signature <u>/Spencer A. Bartl/</u>  Typed or printed name <u>Spencer A. Bartl</u>	Application Number <b>10/722,038</b>		Filed <b>11/24/2003</b>								
	First Named Inventor <b>Jeff peck</b>										
	Art Unit <b>2626</b>	Examiner <b>Shah, Paras D.</b>									
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <table style="width: 100%; border: none;"><tr><td style="width: 50%; vertical-align: top; padding: 5px;"><input type="checkbox"/> applicant/inventor.</td><td style="width: 50%; vertical-align: top; padding: 5px;"><u>/Rebecca M. Bachner/</u> Signature</td></tr><tr><td style="vertical-align: top; padding: 5px;"><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</td><td style="vertical-align: top; padding: 5px;"><u>Rebecca M. Bachner</u> Typed or printed name</td></tr><tr><td style="vertical-align: top; padding: 5px;"><input checked="" type="checkbox"/> attorney or agent of record. <u>54,865</u> Registration number</td><td style="vertical-align: top; padding: 5px;"><u>724-364-3133</u> Telephone number</td></tr><tr><td style="vertical-align: top; padding: 5px;"><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34</td><td style="vertical-align: top; padding: 5px;"><u>September 2, 2009</u> Date</td></tr></table> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p>				<input type="checkbox"/> applicant/inventor.	<u>/Rebecca M. Bachner/</u> Signature	<input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)	<u>Rebecca M. Bachner</u> Typed or printed name	<input checked="" type="checkbox"/> attorney or agent of record. <u>54,865</u> Registration number	<u>724-364-3133</u> Telephone number	<input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34	<u>September 2, 2009</u> Date
<input type="checkbox"/> applicant/inventor.	<u>/Rebecca M. Bachner/</u> Signature										
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<input checked="" type="checkbox"/> *Total of <u>1</u> forms are submitted.											

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Appl. No.	:	10/722,038	Confirmation No.:	6494
Applicant	:	Jeff Peck		
Filed	:	11/24/2003		
TC/A.U.	:	2626		
Examiner	:	Shah, Paras D.		
Docket No.	:	P16469/1020P16469		
Customer No.	:	57035		

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Mail Stop AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Applicants have carefully reviewed and considered the Final Office Action mailed on June 8, 2009 and the cited references. In response to the Final Office Action, Applicants respectfully request review prior to the filing of an Appeal Brief.

**Claim Rejections - 35 U.S.C. § 103(a)**

Claims 1-3, 5, 8-16 and 20 are pending in the present application. Favorable reconsideration and allowance of the standing claims are respectfully requested.

Claims 1, 5, 7, 9, 13, 14 and 19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over US Patent Publication No. 2004/0073692 to Gentle et al. ("Gentle") in view of US Patent No. 7,346,005 to Dowdal ("Dowdal").

Claims 2, 3, 12, 15 and 16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Gentle and Dowdal in view of US Patent No. 6,865,162 to Clemm ("Clemm").

Claims 8, 10, 11 and 20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Gentle and Dowdal in view of US Patent No. 5,920,834 to Sih et al. ("Sih").

Applicant respectfully traverses these rejections.

### **REMARKS**

#### **Claims 1-3, 5, 8, 14-16 and 20**

Applicant respectfully submits that claims 1-3, 5, 8-16 and 20 define over the cited references whether taken alone or in combination. For example, independent claim 1 recites the following language, in relevant part:

A method, comprising:  
receiving a plurality of packets with audio information;  
determining by a voice activity detector whether said audio information represents voice information;  
buffering said audio information in a jitter buffer during said determination;

According to the Office Action, the above recited language is disclosed by the combination of Gentle and Dowdal. In the Final Office Action mailed on June 8, 2009 (“Final Office Action”), the Examiner states that Gentle discloses at paragraphs [0051], [0051], [0042] and [0061], “buffering said audio information in a jitter buffer during said determination” as recited in claim 1. Applicant respectfully disagrees.

According to the Office Action, the Examiner states that it would be obvious to one of ordinary skill in the art that the VAD outputs packets to a second device and that when new audio data is received by the first device, processing by the VAD will occur while the previous packet are being buffered. *See* page 3, Final Office Action. Applicant respectfully submits that this is clearly different than the above recited teaching of claim 1.

Applicant respectfully submits that Gentle fails to teach or suggest all of the limitations contained in claim 1. Paragraph [0051] of Gentle teaches forwarding the results of the jitter to the VAD. However, claim 1 teaches receiving a plurality of packets with audio information, determining... whether said audio information represents voice information and buffering said audio information during said determination. The audio information with the plurality of packets is the same audio information at each step of the limitation. Claim 1 teaches that the audio information is received, that the voice detector determines whether the audio information is voice information and during the determining, the audio information is buffered. Applicant submits that Gentle teaches a

serial approach of processing and then buffering the frame of information. Applicant submits that claim 1 is clearly different than the teaching of Gentle.

Applicant respectfully submits that he has also been unable to locate any teaching in the cited references directed to “buffering said audio information in a jitter buffer during said determination” as recited in independent claim 1. Consequently, Gentle fails to disclose, teach or suggest every element recited in claim 1. Furthermore, Applicant submits that Dowdal, Clemm and Sih fail to remedy the above identified deficiencies of Gentle.

For at least these reasons, Applicant submits that claim 1 is patentable over the cited references, whether taken alone or in combination. In addition, claim 14 recites features similar to those recited in claim 1. Therefore, Applicant respectfully submits that claim 14 is not obvious and is patentable over the cited references for reasons analogous to those presented with respect to claim 1. Accordingly, Applicant respectfully requests removal of the obviousness rejection with respect to claims 1 and 14. Furthermore, if an independent claim is non-obvious under 35 U.S.C. § 103, then any claim depending therefrom is non-obvious. *See* MPEP § 2143.03, for example. Accordingly, Applicant respectfully requests withdrawal of the obviousness rejection with respect to claims 2-3, 5, 8, 15-16 and 20 that depend from claims 1 and 14 respectively, and therefore contain additional features that further distinguish these claims from the cited references.

#### Claims 9-13

Applicant respectfully submits that claims 9-13 define over the cited references whether taken alone or in combination. For example, independent claim 9 recites the following language, in relevant part:

A system, comprising:  
an antenna;  
a receiver connected to said antenna to receive a frame of information;  
a voice activity detector to detect voice information in said frame; and  
a jitter buffer to buffer said information during said detection by said voice activity detector and to measure an average packet delay time, said jitter buffer to add said average packet delay time to the information prior to sending the information to a voice codec;

According to the Office Action, the above recited language is disclosed by the combination of Gentle and Dowdal. Applicant respectfully disagrees.

The Examiner argues, as above, that the Gentle in paragraphs [0051] and [0052] teach that “when new audio data is received by the first device that processing by the VAD will occur while the previous packets are being buffered.” *See* page 9, Final Office Action. Applicant respectfully submits that this is clearly different than the above recited teaching of claim 1.

Applicant respectfully submits that Gentle fails to teach or suggest all of the limitations contained in claim 1. Paragraph [0051] of Gentle teaches forwarding the results of the jitter to the VAD. However, claim 9 teaches a receiver to receive a frame of information, a voice activity detector to detect voice information in said frame, and a jitter buffer to buffer said information during said detection by the voice activity detector. Claim 9 states that the same information is buffered during the detection. Applicant submits that Gentle teaches a serial approach of processing and then buffering the frame of information. Applicant submits that claim 9 is clearly different than the teaching of Gentle.

Applicant respectfully submits that he has also been unable to locate any teaching in the cited references directed to “a jitter buffer to buffer said information during said detection by said voice activity detector” as recited in independent claim 9. Consequently, Gentle fails to disclose, teach or suggest every element recited in claim 9. Furthermore, Applicant submits that Dowdal, Clemm and Sih fail to remedy the above identified deficiencies of Gentle.

For at least these reasons, Applicant submits that claim 9 is patentable over the cited references, whether taken alone or in combination. Furthermore, if an independent claim is non-obvious under 35 U.S.C. § 103, then any claim depending therefrom is non-obvious. *See* MPEP § 2143.03, for example. Accordingly, Applicant respectfully requests withdrawal of the obviousness rejection with respect to claims 10-13 that depend from claim 9, and therefore contain additional features that further distinguish these claims from the cited references.

**Conclusion**

For at least the above reasons, Applicant submits that claims 1-3, 5, 8-16 and 20 recite novel features not shown by the cited references. Further, Applicant submits that the above-recited novel features provide new and unexpected results not recognized by the cited references. Accordingly, Applicant submits that the claims are not anticipated nor rendered obvious in view of the cited references.

Applicant does not otherwise concede, however, the correctness of the Office Action's rejection with respect to any of the dependent claims discussed above. Accordingly, Applicant hereby reserves the right to make additional arguments as may be necessary to further distinguish the dependent claims from the cited references, taken alone or in combination, based on additional features contained in the dependent claims that were not discussed above. A detailed discussion of these differences is believed to be unnecessary at this time in view of the basic differences in the independent claims pointed out above.

It is believed that claims 1-3, 5, 8-16 and 20 are in allowable form. Accordingly, a timely Notice of Allowance to this effect is earnestly solicited.

The Examiner is respectfully requested to contact the undersigned by telephone if such contact would further the examination of the present patent application.

Respectfully submitted,

KACVINSKY LLC

/Rebecca M. Bachner/  
Rebecca M. Bachner, Reg. No. 54,865  
Under 37 CFR 1.34(a)

Dated: September 2, 2009  
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